IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11552 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMAD SAFI @ APODI ALLARAKHA QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11552 of 2001

MR AR SHAIKH for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passd an order on July 16, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short),

detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration four registered offences against the detenu and statements of two anonymous witnesses in respect of whom privilege under Section 9(2) of the PASA Act was exercised by the detaining authority. The detaining authority considered the detenu to be a dangerous person whose activities were found by the detaining authority to be detrimental to public order. The detaining authority, therefore, obsreved that detention of the detenu under the PASA Act is the only efficacious remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal activities.

3. The petitioner/detenu challenges the order of detention on various counts. However, Mr. Shukla, learned advocate appearing for Mr. Shaikh, learned advocate for the petitioner, has restricted his arguments to the ground of delay in passing the order and the ground that the petitioner was in judicial custody when the order was passed.

3.1 Mr. Shukla submitted that the statements of anonymous witnesses were recorded on September 27.5.2001, the same were verified on 25.6.2001 and the order came to be passed on 16.7.2001 and, therefore, there is a delay in passing the order. The delay is not explained. The delay, having remained unexplained, would vitiate the genuineness of the satisfaction recorded by the detaining authority for the need for exercise of these powers.

3.2 Learned advocate Mr. Shukla further submitted that the detenu was in judicial custody when the order was passed. Therefore, in light of the decision of the Supreme Court in the case of Amritlal v. Union of India, AIR 2000 SC 3675, the authority could not have passed the order of detention anticipating grant of bail to the detenu by a Court. He, therefore, urged that the petition may be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. It is clear, on perusal of the record that the statements of anonymous witnesses were recorded on 27.5.2001. The said statements were verified by the detaining authority on 25.6.2001 and the order was passed on 16.7.2001. Even if the date of verification is considered, the order is passed after a lapse of about 20

days. This unexplained lapse/delay in passing the order will have a direct bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the PASA Act. The authority has observed in the grounds of detention that the petitioner is required to be detained under the PASA Act for immediately preventing him from pursuing his activities which are detrimental to public order. The outcome is that the order is passed on a subjective satisfaction which cannot be said to be genuine, but only verbal. If the satisfaction was genuine, there would not have been so much of delay in passing the order and in absence of any explanation coming from the detaining authority by way of an affidavit or otherwise, no concession can be given for the delay. The delay has vitiated the order of detention.

5.1 It is not dispute that the detenu was in custody and anticipating an application for bail and grant of bail, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3675 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgment would be squarely applicable to the facts of the present case. Hence, this petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated July 16, 2001 passed against the detenu is hereby quashed. The detenu-Mohammad Safi @ Apodi Allarakha Qureshi is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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